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Supreme Court of the United States

October Term, 1977
No. 77-1090

FOUNDING CHURCH OF SCIENTOLOGY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Reply to Brief in Opposition to Petition for Writ of Certiorari.

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ARGUMENT.

1. The principal thrust of the government's Brief in Opposition is to portray the constitutional question presented by petitioner as routine and thus unworthy of plenary review by this Court. The studied nonchalance with which the government now treats this case is, of course, in marked contrast to the actions of the government with respect to petitioner heretofore. Thus, the government does not deny that the July 8, 1977 raids on the Church of Scientology by some 25 FBI agents in Washington, D.C. and 134 agents in Los Angeles were raids on a religious group of a magnitude unparalleled in American history.[1] These

[1]It is probably not coincidental that the Church of Scientology happened to be the target of this overkill. For more than a quarter of a century, the Scientology religion has been

(This footnote is continued on next page)

were raids pursuant to search warrants which compelled large numbers of agents to rummage through papers concededly protected by the First Amendment's guarantees of the free exercise of religion, the freedoms of speech and press, and the freedom of associational privacy, in search of undescribed evidence of conspiracies. Yet, without disputing petitioner's factual description of the extreme intrusiveness of the raids, the government blithely characterizes this case as involving "nothing more than the application of settled Fourth Amendment principles to the particular facts" (Br.Opp., p. 6).[2] The government's very refusal to acknowledge that increased sensitivity is required in reviewing search warrants involving significant First Amendment interests only serves to emphasize the importance of the question here presented and the necessity for review by this Court.

Indeed, the government's only response to petitioner's analysis of the First Amendment concerns inherent in a broadly worded search warrant directed at the files and papers of a religious organization is to feign bewilderment that the Church would even suggest that the searches herein implicate the First Amendment interests of religious liberty, freedom of speech and press, and freedom of association (Br.Opp., p. 8).

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subjected to a pervasive campaign of overt and covert intelligence gathering by agencies of the federal government unrelated to legitimate law enforcement activity. Petitioner, for example, appeared on the list of 99 political and religious organizations singled out for special treatment by the IRS' Special Services Staff, information on these organizations being provided to the Revenue Service by the F.B.I. For discussion of the IRS' questionable treatment of the Church with respect to tax status, see *Handeland v. C.I.R.*, 519 F.2d 327, 330-331 (9th Cir.).

[2]"Br.Opp." refers to the brief for the United States in Opposition.

Since the government is unable to deny the fact that the affidavit in support of the search warrants made no claim that the Church of Scientology is other than a bona fide religious organization, the government now makes the coy but irrelevant suggestion that such a claim conceivably could be made (Br.Opp., pp. 8-9).[3] The government then proceeds to set up and demolish two straw-man First Amendment arguments that petitioner never made (Br.Opp., p. 9), but fails to provide any reasoned response to Petitioner's substantial contention (Pet. for Cert., pp. 13-14) that a search warrant which, as here, directs agents to scrutinize every paper in a church's files for undescribed evidence of conspiratorial crimes, permits even the seizure of literature describing the doctrines of the church, and threatens the associational privacy of church members whose names appear in the parishioner confessionals and similar protected communications inevitably present in a church's files.[4]

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[3]The bona fides of the Church as a religious organization are attested to by judicial decisions. See, *e.g.*, *Handeland v. C.I.R.*, 519 F.2d 327, 330-331 (9th Cir.); *Barr v. Weise*, 293 F.Supp. 7, 10; *Church of Scientology of Hawaii v. United States*, 485 F.2d 313 (9th Cir.); and *Church of Scientology of California v. Department of Justice*, 410 F.Supp. 1297. Neither *Founding Church of Scientology v. United States*, 412 F.2d 1197, 1199 (Ct.Cl.), nor *Allard v. Church of Scientology*, 58 Cal.App.3d 439, 129 Cal.Rptr. 797, hold that the Church of Scientology is other than a bona fide religious organization. In any event, if the government is seriously contending that the Church of Scientology is not a bona fide religious organization, the claim comes too late. See, *Whiteley v. Warden*, 401 U.S. 560.

[4]It is, of course, no answer to contend, as does the government (Br.Opp., pp. 9-10) that First Amendment interests may be disregarded merely because the search warrants issued upon "an exceptionally strong showing of probable cause." The requirement that search warrants particularly describe the property

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Is a search warrant directed at "the primary depository of documents for Scientology in the United States" containing "a permanent history of matters touching upon the Church" (Gov.App., p. 32) to be treated by the same Fourth Amendment criteria applicable to a warrant aimed at the files and records of a suspected bookmaker, gambler, drug dealer or real estate swindler? So far as the government is concerned, the answer is yes. In contrast, the opinion of the District Court was cognizant of "the need for increased sensitivity in cases in which religious organizations are involved" (App. for petitioner, p. 35a), giving recognition to the principle that the Fourth Amendment proscription against unreasonable searches and seizures "must not be read in a vacuum", for searches and seizures "reasonable as to one type of material in one setting may be unreasonable in a different setting with respect to another knd of material". *Roaden v. Kentucky,* 413 U.S. 496, 501.

The Washington, D.C. search warrant is, on its face, not only directed at premises occupied by a religious organization, but additionally directs a search of particular portions of the premises likely to contain constitutionally protected files and papers.[5]

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to be seized is independent from the requirement that no search warrants shall issue but upon a showing a probable cause. Moreover, petitioner disputes the government's characterization of documents as "stolen": this is a contested fact upon which no court has made any finding, and it is based upon the allegations of a single apostate of the Church.

[5]The search warrant directs the search of the Founding Church of Scientology, specifically the "rear portion of the fourth floor of the building" which "houses the offices of the P.R. [Public Relations] Bureau, the Information Bureau, the Legal Bureau and the Assistant Guardian's office. There

In short, petitioner contends, and the government denies, that the facial validity of a search warrant directed at the files and papers of a religious organization must be tested by standards that are sensitive to the First Amendment interests potentially threatened by such a search warrant.

The need to circumscribe the discretion of officers executing a search warrant, a need especially great where the warrant impinges upon freedoms of speech and press (*Stanford v. Texas,* 379 U.S. 476, 485), is all the greater where, as here, the warrant impinges upon three distinct First Amendment interests. A warrant to search a religious organization endangers the free exercise of religion because it strikes directly at the confessional and other parishioners' confidential communications, made only within a church, and threatens the freedoms of expression and associational privacy which a religious group and its members are entitled to exercise.

This case does not merely involve a search warrant aimed at "records" in the sense of ordinary commercial and financial records,[6] but rather "records" in the sense used in the search warrant and supporting affidavit herein—namely, records "containing documents reflecting all activities of the Church and all external

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are files located in each of these offices." (Appendix filed in the Court of Appeals, p. 22). The Church's public relations office, as should be expected of any public relations office, is concerned with press matters, including gathering news stories and issuing press releases. The public relations office handles, for example, news gathering for the publication of *Freedom,* a Church of Scientology news journal with a circulation of 500,000. Further research and documentation for the news gathering function of the public relations office is provided by the Information Bureau.

[6]See, *Stanford v. Texas,* 379 U.S. 476, 485, n. 16.

references to the Church since . . . 1966", which records "are kept both to facilitate operations of this large organization . . . and also to provde a permanent history of matters touching upon the Church." (Gov. App., p. 32). See, *United States v. Thompson,* 495 F.2d 165, 169-170 (D.C. Cir.). These are documents bearing upon the activities of a church as a church.[7]

2. The government's brief in opposition also lends credence to petitioner's contention that review herein is necessary to consider whether this Court, in its discussion of the specificity of the search warrants in *Andresen v. Maryland,* 427 U.S. 463, 479-482, intended the expansive interpretation accorded that discussion by the government and the Court of Appeals herein. The importance of the question is highlighted by the government's assertion that it "deliberately modeled" Item 162 of the present warrants "after the clause at issue in *Andresen*" (Br.Opp., p. 7). The Justice Department views *Andresen* as authority for the routine inclusion in all search warrants of the catchall clause, "other fruits, instrumentalities and evidence [of the crimes alleged in the accompanying affidavit] at this time unknown" (427 U.S. at 479).

Did this Court in *Andresen* intend to permit the use of such a catchall clause (1) regardless of whether the place to be searched is an entity ordinarily entitled to First Amendment protection; (2) regardless of whether the particular files and records to be scrutinized are likely to contain papers themselves entitled to constitutional protection, *e.g.,* the names and com-

[7]In this context, the government's concession that it seized a large number of documents that should not have been taken is particularly ominous, as is the sheer volume of papers seized —some 100,000 pages in the simultaneous seizures from Church premises in Washington, D.C. and Los Angeles.

munications of innocent adherents of a controversial religious or political organization; and (3) regardless of whether the accompanying affidavit alleges conspiratorial crimes requiring the making of legal, as opposed to factual, judgments by the executing officers with respect to which papers constitute "evidence" of the conspiracies? See, *United States v. Klein,* 565 F.2d 183, 187, n. 6, 190, and see dissenting opinion, 191-192 (1st Cir.).[8]

With respect to the practice of describing in a search warrant the property to be seized by reference to its supporting affidavit, the government fails to understand petitioner's contentions. It is not the incorporation of the supporting affidvait *per se* of which petitioner complains, but rather the incorporation of an affidavit which *itself* fails to particularly describe the property to be seized and fails to define the offenses alleged without ambiguity or undue complexity. The important question here is whether this Court in *Andresen* intended not only to permit the routine inclusion of catchall "other evidence" clauses in search warrants generally, but additionally, whether such clauses may define the "other evidence (at this time unknown)"

[8]The government's suggestion (Br.Opp., p. 8, n. 7) that Item 162 "did not broaden the scope of the search" because, even without the clause, "the agents could have seized incriminating items, not specifically mentioned in the warrant, if they unexpectedly came across them during the search" is mistaken. Unlike the inadvertent discovery of relevant evidence not mentioned in a search warrant during the course of an authorized search for particularly described property, Item 162 *directs* the agents to read through all of the Church's documents for the specific purpose of discovering "evidence" not specifically described elsewhere in the warrant. Such a directive, contained in a warrant authorizing the search of a church's files, necessarily invites exploratory rummaging through constitutionally protected papers. See, *Coolidge v. New Hampshire,* 403 U.S. 443, 467.

to be seized by reference to the warrant's supporting affidavit regardless of its length, complexity, ambiguity and the number of officers to whom the warrant and affidavit will be distributed for execution.

Petitioner respectfully submits that the government has failed to address itself to the Fourth Amendment dangers inherent in its expansive interpretation of *Andresen* (see, Pet. for Cert., pp. 17-19) in addition to ignoring the vital First Amendment interests implicated by broadly worded search warrants aimed not only at church premises, but also at files and records which themselves are likely to contain papers and communications protected by the guarantees of religious liberty, freedom of speech and press, and freedom of association.

Respectfully submitted,

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